

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SRC Holding Corporation, f/k/a
Miller & Schroeder, Inc., and its subsidiaries,

Debtors.

BKY Nos. 02-40284 – 02-40286
(Chapter 7)
Jointly Administered

Brian F. Leonard, Trustee,

Plaintiff,

- vs. -

ADV 04-4044

The Marshall Group, Inc.,

ANSWER

Defendant.

The Marshall Group, Inc. (the “Marshall Group”), the defendant in the above-entitled action, by and through its undersigned counsel, submits this Answer to the Complaint of Brian F. Leonard, Trustee (the “Plaintiff”) and, in connection therewith, denies each and every statement, allegation and thing contained in the Complaint except and to the extent specifically admitted or qualified below:

1. The Marshall Group admits Paragraph 1 of the Complaint.
2. The Marshall Group admits Paragraph 2 of the Complaint.
3. As to the allegations in Paragraph 3 of the Complaint, the Marshall Group states that it was formerly known as Marshall, Miller & Schroeder, Inc. and that it has several wholly-owned subsidiary corporations, including Marshall Investments Corporation, formerly known as MM&S Investments Corporation, and Marshall Financial Inc., formerly known as MM&S Financial Inc.

4. The Marshall Group admits Paragraph 4 of the Complaint.

5. As to the allegations in Paragraph 5 of the Complaint, the Marshall Group admits that Miller & Schroeder Financial Inc. was a registered broker dealer at the time of the asset sale that is alleged in the Complaint and that none of the assets, including the broker dealer licenses and registrations, were purchased by or transferred to the Marshall Group as part of the asset sale. The Marshall Group admits that Miller & Schroeder Investments, Inc. (“MSI”) was engaged in the commercial loan origination business at the time of the asset sale and that Miller & Schroeder Inc. was a holding company.

6. The Marshall Group states that the allegations in Paragraph 6 of the Complaint relate to an entity other than the defendant, but admits, upon information and belief, that one or more of the Debtors had one or more common officers. The Marshall Group is without sufficient information to form a belief as to the truth or falsity of the remainder of Paragraph 6 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

7. The Marshall Group states that the allegations in Paragraph 7 of the Complaint relate to an entity other than the defendant, but admits, upon information and belief, that one or more of the Debtors were parties to NASD arbitration and litigation arising out of the Heritage bond sales. The Marshall Group is without sufficient information to form a belief as to the truth or falsity of the remainder of Paragraph 7 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

8. The Marshall Group states that the allegations in Paragraph 8 of the Complaint relate to an entity other than the defendant and is without sufficient information to form a belief as to the truth or falsity of Paragraph 8 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

9. The Marshall Group states that the allegations in Paragraph 9 of the Complaint relate to an entity other than the defendant and is without sufficient information to form a belief as to the truth or falsity of Paragraph 9 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

10. The Marshall Group states that the allegations in Paragraph 10 of the Complaint relate to an entity other than the defendant and, upon information and belief, denies the allegation that a strategy was devised by representatives of the Debtors to insulate the assets of MSI from the claims of creditors.

11. The Marshall Group states that most of the allegations in Paragraph 11 of the Complaint relate to an entity other than the defendant and, upon information and belief, denies the allegation that the Debtors or any of their directors, officers or employees “formulated a strategy” for acquiring control of the assets of the Debtors. Upon information and belief, the Marshall Group states that the Debtors marketed certain assets of the Debtors in late 2000 and 2001. Certain of the Debtors’ assets were sold to other parties. As a result of the marketing of various assets of the Debtors, only the Marshall Group and two other parties came forward with concrete offers to acquire certain assets of MSI. All three offers were reviewed by the board of directors and considered by the shareholders. The shareholders voted in favor of the proposal presented by the Marshall Group because, upon information and belief, it offered the most favorable terms to the Debtors. The Marshall Group admits that it closed on an asset purchase transaction to purchase certain assets of MSI on August 31, 2001 and that it ultimately employed some former employees and executives of the Debtors. The Marshall Group is without sufficient information to form a belief as to the truth or falsity of the remainder of Paragraph 11 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

12. The Marshall Group denies that the Asset Purchase Agreement (the “APA”) was executed on May 1, 2001, but admits the remaining allegations contained in Paragraph 12 of the Complaint. The Marshall Group affirmatively states that the assets and businesses of the Debtors were marketed to other parties, that certain assets of MSI were in fact sold to other parties, that other offers for the assets acquired by the Marshall Group were received and duly considered by the Debtors, and that the purchase transaction consummated in accordance with the APA was determined in good faith by the Debtors, its management and its shareholders (pursuant to a duly called meeting and vote) to be in all respects fair, superior to all other offers and available alternatives, and in the best interests of the Debtors, its creditors and other constituencies.

13. As to the allegations in Paragraph 13 of the Complaint, the Marshall Group admits that it assumed substantial debts, liabilities and obligations as part of the consideration it furnished under the APA including, without limitation, obligations owed by the Debtors to William Sexton, a secured creditor who held a properly perfected security interest in the assets of the Debtors, in the principal amount of \$4,500,000 and assumed substantial obligations under one or more real estate leases, equipment leases, contractual obligations and other liabilities. The Marshall Group further admits that it has paid substantial sums and is obligated to pay amounts in the future as additional consideration under the APA based upon the gross revenues of the Marshall Group as set forth in the APA. The Marshall Group further states that it was required under the APA to assume substantial obligations and liability for at least one onerous, above-market real estate lease and various office equipment leases in order to relieve the Debtors from substantial liabilities despite the fact that such leases were not necessary for the utilization of the assets purchased from MSI and the operation of the business engaged in by the Marshall Group.

14. As to the allegations of Paragraph 14 of the Complaint, the Marshall Group admits that it purchased the certain assets under the APA. The Marshall Group denies that the assets acquired by the Marshall Group had a fair market value in excess of \$17,000,000. The Marshall Group affirmatively states that it paid fair value and substantial consideration for the assets acquired under the APA and that the Plaintiff's allegations with respect to the fair market value of the assets that were purchased is not credible or supportable under any reasonable standard or assessment. The Marshall Group states that among the assets and obligations it acquired for fair value included the assumption of MSI's rights and obligations relative to loan and servicing agreements pursuant to certain participation agreements. The Marshall Group further states that few of the loan servicing and participation agreements were assignable under their terms and there was uncertainty whether the Marshall Group acquired any enforceable legal "rights" under many of the agreements by reason of the APA.

15. As to the allegations in Paragraph 15 of the Complaint, the Marshall Group restates and incorporates by reference its responses to all of the foregoing paragraphs as if fully set forth herein.

16. The Marshall Group denies the allegations concerning the intent of the Marshall Group contained in Paragraph 16 of the Complaint. The Marshall Group states that the remaining allegations in Paragraph 16 of the Complaint relate to an entity other than the defendant and that defendant is without sufficient information to form a belief as to the truth or falsity of the allegations and therefore denies the same and puts the Plaintiff to its strict proof thereof.

17. The Marshall Group denies the allegations contained in Paragraph 17 of the Complaint.

18. The Marshall Group states that the allegations in Paragraph 18 of the Complaint relate to an entity other than the defendant and that defendant is without sufficient information to form a belief as to the truth or falsity of Paragraph 18 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

19. The Marshall Group states that the allegations in Paragraph 19 of the Complaint relate to an entity other than the defendant and that defendant is without sufficient information to form a belief as to the truth or falsity of Paragraph 19 of the Complaint and therefore denies the same and puts the Plaintiff to its strict proof thereof.

20. The Marshall Group denies the allegations contained in Paragraph 20 of the Complaint. The Marshall Group states that the language of 11 U.S.C. § 550 speaks for itself and states that 11 U.S.C. § 550(a) provides that, to the extent that a transfer is avoided under 11 U.S.C. § 548, the property transferred may be recovered in the first instance and that the value of such property may be recovered only if the Court so orders.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim for which relief can be granted.
2. The Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.
3. The Plaintiff's claims are barred in whole or in part by the doctrines of laches, estoppel and waiver.
4. The Marshall Group reserves the right to add to this Answer and rely upon affirmative defenses disclosed by further investigation and discovery.

WHEREFORE, the defendant, The Marshall Group, Inc., prays for relief as follows:

1. For an Order dismissing the Plaintiff's Complaint with prejudice;
2. For an Order granting the Marshall Group its costs, reasonable attorneys' fees and disbursements incurred in defending this adversary proceeding; and
3. Such other and further relief as the Court deems just and equitable.

Dated: February 10, 2004.

LINDQUIST & VENNUM, P.L.L.P.

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**ATTORNEYS FOR
THE MARSHALL GROUP, INC.**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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Brian F. Leonard, Trustee,

Plaintiff,

Adv No. 04-4044

vs.

The Marshall Group, Inc.,

Defendant

UNSWORN CERTIFICATE OF SERVICE

I, Marie Dagostino, declare under penalty of perjury that on the 10th day of February, 2004, I faxed and mailed a copy of the foregoing Answer to Complaint by first class mail, postage prepaid to each entity named below at the address stated below for each entity.

Edward W. Gale, Esq.
Leonard, O'Brien, Spencer, Gale & Sayre, Ltd.
100 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Facsimile: 612-332-2740

Dated: February 10, 2004

By: /e/Marie Dagostino
Marie Dagostino